



Office of the Attorney General
Washington, D. C. 20530

January 12, 2000

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Dear Messrs. Eig and Bernstein and Ms. Osberg-Braun:

I have reviewed your letter of January 5 concerning the case of **Elian** Gonzalez, as well as the issues that Mr. Bernstein raised when he and others met with me on the evening of January 7, including the fact that you have filed a custody action on behalf of Lazaro Gonzalez in the Miami-Dade County Circuit Court. I understand that court has granted a temporary protective order to Lazaro Gonzalez. While I am always open to considering new information that might arise, I am not currently aware of **any** basis for reversing Commissioner Meissner's decision that **Juan Gonzalez--Elian's** father--has the **sole authority** to speak for his son on immigration matters.

As you know, the United States is not a party to the action you have **filed** in Florida court, nor is it named in the temporary protective order that the Florida Circuit Judge issued January 10. Indeed, **the question of** who may speak for a six-year-old child in applying for admission or asylum is a matter of federal immigration law. Nothing in the temporary protective order changes the government's determination that Juan Gonzalez can withdraw applications for admission and asylum relating to **Elian** and that he has done so. In **the Department's judgment**, the Florida court's **order has no** force or effect insofar as INS's administration of the immigration laws is concerned.

In our meeting last Friday evening, Mr. Bernstein said that the INS itself had originally announced that state courts could resolve **Elian's** status in the United States. I think it is important to clarify, therefore, this Department's views about

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the possible role of state courts in a case such as this. In the first few days after Elian's arrival in the United States, when it was suggested that INS's placement of Elian in the care of his great-uncle amounted to a grant of custody, INS indicated that it could not grant custody and that such a request would have to be put before the state courts. As the case evolved, it became clear that Elian's father, who was still in Cuba, was asserting a parental relationship with Elian and had adequately expressed his wish, under the immigration laws, for Elian's petition for admission to this country to be withdrawn. In these circumstances, INS was obliged to determine whether the father was the appropriate person to speak for Elian on immigration issues. That question, as I have said, remains one of federal, not state, law. The Commissioner's resolution of that question--as well as of other immigration matters--may be challenged, if at all, only in federal court. We are prepared to litigate in that forum. Accordingly, Commissioner Meissner has determined that the January 14 date should be extended to accommodate any federal court proceedings. This little boy has been through so much, and it is therefore imperative that all of us do what we can to resolve his case as soon as possible.

With respect to the issues raised in your January 5 letter, I would make the following observations. Elian Gonzalez is a six-year-old child who has lost his mother. As a general matter, when dealing with a child this young, the immigration law, like other areas of law, looks to the wishes of the surviving parent. One circuit court case indicated that a twelve-year-old child may apply for asylum over the wishes of his parents in some circumstances. See *Polovchak v. Meese*, 774 F.2d 731, 736 (7th Cir. 1985). That case also makes it clear, however, that a twelve-year-old child is 'near the lower end of an age range in which a minor may be mature enough to assert certain individual rights that equal or override those of his parents.' Commissioner Meissner has determined that, under applicable law, Elian is too young to make legal decisions for himself, and that his father has the legal authority to speak for him in immigration matters.

Commissioner Meissner reached her decision through a careful and thorough process. All of the available information was considered, including the reports from two lengthy and private interviews with Elian's father, Juan Gonzalez, and the report from the December 20 meeting with Elian's great uncle and cousin and each of you. Commissioner Meissner also carefully considered the allegation that Juan Gonzalez was under some form of coercion, and is confident, based on her representative's direct contact with Juan Gonzalez, the father's very close relationship

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with **Elian**, and the other evidence provided, that the father has expressed his true **wishes** in **asking** that his son be returned to him.

The INS does not rule out the possibility of a case in which an asylum application would be accepted from a young child against the **wishes** of a parent. In that regard, the INS Guidelines for Children's **Asylum** Claims provide a useful framework. In particular, they **provide** for a review of the objective circumstances relating to possible torture or persecution in the child's home country in cases where a child is too young to express a competent view on these matters. The INS reviewed the asylum application you sought to file on **Elian's** behalf, considered all other **relevant** available information, and found no objective basis for overriding the **father's** wishes for his son. In particular, the INS found no credible information indicating that the child would be at risk of torture or persecution if returned to his father, and thus concluded that it had no reason to **question** the father's decision not to assert an asylum claim.

The **specific** language you cite from the INS Inspector's Field Manual is not applicable here. It is designed to protect an unaccompanied minor who arrives here **illegally**, has no parent to speak for him, and is **also** capable of speaking for himself. In those circumstances, if the child indicates a wish to return voluntarily to his country of origin, he would normally be allowed to withdraw the application for admission and be sent home, rather than being placed into removal proceedings. If the child **expresses** a fear of persecution, however, the Field Manual provides that the child should be placed not in expedited removal proceedings, but rather in conventional removal **proceedings** before an immigration judge.

Nothing in the field guidance suggests that a father's wishes **regarding** his six-year-old child should be overridden. On the contrary, in a related provision you do not cite, the **Field** Manual makes it clear that the first **responsibility** of the INS when confronted with an unaccompanied minor is to attempt to remedy the **situation** by finding the child's **parent** or legal guardian, even if that person is outside the United States. It is only **when** that effort is unsuccessful that the Field Manual provisions you cite even come into play.

Even if it were applicable in this **situation**, the provision you cite would not answer the basic question presented by this case: Who speaks for the child? If **Elian** is not competent to "indicate[]" a fear of persecution or **intention** to apply for

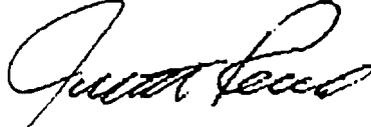
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asylum," then someone would have to decide in his behalf whether to do so. That someone, under universally accepted legal norms, is his father. And his father has stated, in no uncertain terms, that he does not wish for **Elian** to make an asylum claim. As noted above, the INS considered relevant information, including the statements of **Elian's** Miami relatives and information in the asylum application, and determined that there is no objective basis for a valid asylum claim. Consequently, it found no conflict between **Elian** and his father. Under these circumstances, the appropriate course of action was to honor the desires of the father regarding **Elian's** applications for admission and asylum. It is not appropriate to commence removal proceedings against this six-year-old boy. The Field Manual does not suggest otherwise.

Once again, it is my strong hope that we can work together to resolve this child's status as soon as possible.

Sincerely,



Janet Reno